

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

MISC. LAND APPLICATION No.116 OF 2021

(Arising from Land Appeal No. 93 of 2016 of the High Court of Tanzania at Mwanza, Originating from Civil Case No. 63 of 2015 in Nyamagana District Court)

THE REGISTERED TRUSTEES OF EFATHA MINISTRIES APPLICANT

Versus

NYANZA CO-OPERATIVE UNION (1984) Ltd 1st RESPONDENT

MAMA JIKOMBOE (JIKOMBOE MAMA)2nd RESPONDENT

RULING

28th September & 7th October 2022

OTARU,J.:

The Applicant herein is applying for extension of time within which to lodge a Notice of Appeal with a view to appeal to the Court of Appeal of Tanzania against the decision of the High Court in Land Appeal No. 16 of 2017 made on 20th July 2018.

The Application is brought by way of Chamber Summons under Section 11(1) of the Appellate Jurisdiction Act, Cap 141 (R.E. 2019) and supported by Affidavit deposed by **Jeremiah Werema Nyagui** on 6th December 2021, which is opposed by Counter Affidavit deposed by **John Masalu** on behalf of both Respondents.

The Application was argued before me orally. The Applicant was represented by learned advocates, Kassim Gilla and Kevin Mutatina. On

M. Olan

behalf of the Respondents appeared the Principal Officer of the 1st Respondent, John Masalu and learned Advocate Eric Muta.

Counsel for the Applicants stated that they had filed the Notice of Appeal, sought for leave, which was granted, and lodged Civil Appeal No. 102 of 2019 within time. Then discovered that the letter requesting for records was missing. They found themselves withdrawing the matter with intention of rectifying the anomaly and filed this Application on the third day of receipt of the Order, that is, on the day immediately following the weekend.

The learned advocates argued that they meet the necessary criteria under Section 11(1) of the **Appellate Jurisdiction Act** (Cap. 141) as discussed in the case of **Wambura** Civil Application No. 320/01 of 2020. That they are able to account for each day of delay, the delay is not inordinate and there is existence of point of law of importance. They argued that because they were pursuing the Appeal that was withdrawn, the Court should consider that as technical delay. Referring to the case of **Fortunatus Masha v. William Shija** (1997) TLR 154 where the Court of Appeal held that a period of technical delay may amount to reasons for extension of time, counsel prayed that this Court considers their technical delay as acceptable reason for grant of extension. They acted promptly after receipt of the Order and there is



point of law of importance at paragraph 9 of the Affidavit. Finally, counsel prayed for the Court to grant the Application so that they may have an opportunity to challenge the decision of the High Court.

The Respondents on the other hand strongly opposed the Application. They prayed to adopt the Counter Affidavit filed and further argued that the Applicants, did not advance any reasons when they withdrew Appeal No. 102 of 2019. The reason they are advancing now is an afterthought. The Respondents' counsel are questioning the withdrawal, as the Applicant could have simply sought to file a supplementary record instead. On the legal point, counsel submitted that there should be a point of illegality apparent on the face of the record, which paragraph 9 of the Affidavit does not show. They concluded that the delay is inordinate and caused by the negligence of the Applicants thus the Application should be dismissed with costs.

In the rejoinder, the Applicant's counsel stated that they could not have filed supplementary records because that needed to be done within 14 days while they discovered the anomaly after that period had expired.

I have given careful consideration to the arguments for and against the Application herein advanced by the learned advocates for

the Applicant and the Respondents, respectively. The central issue for determination is **whether sufficient reasons have been advanced to warrant the extension of time sought.**

As cited in the Chamber Summons the Court is properly moved through Section 11(1) of the **Appellate Jurisdiction Act**, (Cap 141) that gives this Court power to grant leave to appeal out of time if the time for making the application has already expired

This Court has discretionary powers to grant an application for extension of time; but that discretion has to be exercised according to the rules of reason and justice as correctly referenced by the Applicant's counsel to **Wambura's** (supra) case.

The position of the law is settled that whenever there is application for extension of time the applicant will succeed upon showing good cause to justify why his application should be granted. It has to be noted that the good cause to warrant the extension of time is not provided for as it depends on the circumstance of each and every case.

As it was highlighted in the case of **Jacob Shija vs. M/S Regent Food & Drinks Limited and The Mwanza City Council**, Civil

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Application No 440/08 of 2017, CAT at Mwanza (unreported) among other things the court stated that:

'What amounts to good cause cannot be laid by any hard and fast rule but is dependent upon the facts obtaining in each particular case. That is each case will be decided on its own merits, of course taking into consideration the questions, inter alia, whether the application for extension of time has been brought promptly, whether every day of delay has been explained away, the reasons for the delay, the degree of prejudice to the respondent if time is extended as well as whether there was diligence on the part of the applicant.'

In the Application at hand, I have gone through the Applicant's submissions and revisited the Affidavit. The reasons advanced by the Applicant, of the technical delay that caused the withdrawal of the Appeal, but then after withdrawing the matter, this Application being filed on the next following business day and existence of legal issues for consideration by the Court of Appeal; I am convinced that the Application was brought promptly, each day of delay is explained away and there are legal issues for consideration by the Court of Appeal. Therefore there are sufficient reasons advanced by the Appellant to warrant the extension of time. The Application therefore has merits.



In exercise of this Court's discretionary powers, the Application for extension of time within which to lodge the Notice of Appeal to the Court of Appeal is hereby granted. Notice of Appeal to be lodged within 14 days.


No order as to costs.

DATED at **MWANZA** this 07th day of October, 2022.


M.P. OTARU
JUDGE

This Ruling is delivered under my hand and the seal of this Court this 7th day of October, 2022 in the presence of Kelvin Mutatina (Adv) for the Applicant and holding brief for Erick Mutta (Adv) for the Respondent.




M.P. OTARU
JUDGE
07/10/2022